IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5417 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DISTRICT DEVELOPMENT OFFICER - Petitioner(s)
Versus
AT CHAUHAN & 1 - Respondent(s)

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Appearance :

M/S.VYAS ASSOCIATES for Petitioner(s) : 1,
MR PRADEEP PATEL for Respondent(s) : 1,
Mr. Maulik Nanavati, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 23/11/2006

ORAL JUDGMENT

By way of this petition under Article 226/227 of the Constitution of India the petitioner, District Development Officer,

Surendranagar, has challenged the order passed by the Gujarat Civil Supplies Tribunal [hereinafter referred to as 'the Tribunal'] dated 11th April 1997 in Appeal No. 467 of 1995 whereby the Tribunal has partly allowed the said appeal and modified the order dated 17th January 1995 of penalty of compulsory retirement substituting the penalty of two increments with future effect.

2. The facts leading to the present Special Civil Application are that at the relevant time respondent No.1 [hereinafter referred to as 'delinquent'] was serving as Assistant Taluka Development Officer, Wadhwan was also holding additional charge of Taluka Development Officer, Wadhwan from 5.7.1982 to 8.7.1990. Departmental enquiry was initiated against him alleging inter alia that he has unauthorisedly issued orders pertaining to conversion of certain plots of land into Non-Agriculture [N.A] purpose without proper scrutiny and that he issued N.A. Orders during

3.12.1990 to 6.12.1990 when T.D.O., was away on leave even though he was not holding the additional charge of TDO. It appears that the aforesaid orders in respect of 7 plots were reviewed by the Deputy Collector, Wadhwan, Sub-Division, Surendranagar and were subsequently set aside. The delinquent was served with the chargesheet dated 29.8.1991 which was replied by the delinquent on 15.12.1991. A departmental enquiry was ordered and Enquiry Officer was appointed. On conclusion of the enquiry, Enquiry Officer submitted report on 23.7.1992 and held that all the charges were proved beyond doubt. The disciplinary authority agreed with the finding of the Enquiry Officer and the report submitted by the Investigating Officer and issued show cause notice dated 29.5.1993 to the delinquent proposing punishment of compulsory retirement from service. The delinquent replied to the said show cause notice dated 17th June 1993 and has stated that he had no written reply to

make apart from the fact that he has already asked for voluntary retirement from service. Thereafter delinquent was given oral hearing on 12.7.1993, again he had reiterated what was submitted by him earlier. Thereafter, the disciplinary authority imposed punishment of compulsory retirement by order dated 17.1.1995. Being aggrieved and dissatisfied with the order passed by the disciplinary authority dated 17.1.1995 of compulsory retirement, the delinquent preferred First Appeal before the Additional Development Commissioner, Gandhinagar, which came to be rejected by order dated 8.8.1995. Being aggrieved and dissatisfied with the order of compulsory retirement dated 17.1.1995 as well as the order passed by the appellate authority dated 8.8.1995 the delinquent preferred Second Appeal before the Tribunal which was numbered as Appeal No. 467 of 1995. The Tribunal partly allowed the said appeal, after considering the submission made on behalf of the

delinquent with regard to quantum of punishment only and modified the order of penalty of compulsory retirement by reducing it to withholding of 2 increments with future effect by observing that as the delinquent was to superannuate after 1 year and 3 months and he had put in 33 years of service and had sought voluntary retirement with effect from 31.12.1995, he will lose all pensionary benefits and therefore the penalty of compulsory retirement is too excessive. It is required to be noted that so far as other submissions on behalf of the delinquent are concerned, they were held against the delinquent by the Tribunal, and the Tribunal interfered with the order of penalty on the aforesaid ground by observing that the gravity of the charge is that he passed irregular N.A. Orders for 8 plots of land around Wadhwan. Being aggrieved and dissatisfied with the judgment and order 11th April 1997 passed by the Tribunal in Appeal No. 467 of 1995 the petitioner has

preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Deep Vyas, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Tribunal has exceeded in its jurisdiction in interfering with the order of penalty when all the charged levelled against the delinquent were proved beyond doubt by the Enquiry Officer and accepted by the disciplinary authority and even the Tribunal has also confirmed the same. It is further submitted by him that looking to the charges proved against the delinquent which are very serious in nature the Tribunal has not justified in interfering with the order of punishment when there is no defect in the departmental enquiry found by the Tribunal. It is further submitted by him that merely because after the departmental enquiry was

initiated and the delinquent had prayed for voluntary retirement it is no ground not to impose the penalty on establishing and proving the charge against the delinquent. It is further submitted by him that the Tribunal is not justified in observing that the charge levalled against the delinquent was only with regard to passing irregular orders of granting Non-Agricultural permission. It is submitted that it was not the question of only passing irregular orders, but though the delinquent was not in-charge of the post of Taluka Development Officer and though he was on leave he passed the order granting N.A. permission which cannot be said to be only irregular but illegal also and which shows lack of bonafides. It is further submitted that even the penalty imposed by the Tribunal, i.e., withholding of two increments with future effect is virtually not imposing any punishment as the delinquent was to retire after one year and 3 months and therefore he would not

be in service to honour the order of imposition of penalty of withholding of 2 increments with future effect. Thus, the penalty imposed by the Tribunal is as good as no penalty and/or no punishment imposed on the delinquent. It is, therefore, requested to allow the present Special Civil Application.

3. The petition is opposed by the learned advocate appearing on behalf of respondent No.1. He has submitted that there is no jurisdictional error committed by the Tribunal which calls for interference of this Court in exercise of powers under Article 226/227 of the Constitution of India. He has further submitted that in the facts and circumstances of the case more particularly though the charges having been proved against the delinquent, considering the fact that after one year and 3 months he was to retire, and in the meantime he had already opted for voluntary retirement with effect from

31.12.1995, and that the delinquent had served for 33 years, when the Tribunal had modified the order of penalty it cannot be said that the order passed by the Tribunal is erroneous and/or illegal and/or beyond jurisdiction which requires to be quashed and set aside by this Court. The learned advocate appearing on behalf of the respondent No.1 has tried to make submission on the Enquiry Report, however considering the fact that the Tribunal has held against the delinquent on procedural aspects and the impugned order has been passed only qua quantum of punishment which has been accepted by the respondent No.1, i.e., the delinquent, it is not open for the respondent No.1 now to challenge the Enquiry Report more particularly when the grounds, on which the learned advocate appearing on behalf of the respondent No.1 wants to address before this Court, were not canvassed before the first appellate authority and/or the Tribunal. Making the above submissions, the learned advocate

appearing for the delinquent has requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing for the respective parties. The respondent delinquent was chargesheeted for charges as per chargesheet dated 29.8.1991. Charge No.1 was that during the period between 5.7.1990 and 8th July 1990 while the delinquent was holding the charge of T.D.O. he had granted Non-Agricultural use permission with regard to certain parcels of land though the said lands were situate within 5 Kms. from the area of Nagarpalika and though the Taluka Panchayat was required to grant N.A. permission, he had obtained the applications hurriedly and without proper enquiry, granted N.A. use permission contrary to the Rules and Act, and it shows the lack of integrity. Charge No.2 was in connection with grant of N.A. permission in respect of one another land bearing Survey No. 455 situate at Village Dudhrej, and

though such powers were vested in the District Panchayat, on the application dated 6.7.1990 he granted the N.A. permission on the very next date, i.e., 7.7.1990 without jurisdiction, which shows lack of integrity. Charge No.3 was also in relation to grant of N.A. permission by the delinquent in respect of the land situate at Village Prangad, where it was alleged that though the power of grant of N.A. permission was vested in the Taluka Panchayat and though an application in connection therewith was earlier rejected on 12th June 1990 and though there was no further application and even when the defects were not removed on the application dated 3.7.1990, he had granted N.A. permission without jurisdiction by order dated 6.7.1990 and such act on his part shows lack of integrity. Charge No.4 was in respect of the fact that though he was not holding the charge of Taluka Development Officer for the period from 3.12.1990 to 6.12.1990, he granted the N.A. permission with regard to lands

bearing Survey No. 503 and 475/2 situate at Dudhrej. Thus, he exercised powers not vested in him which showed lack of integrity. Charge No.5 was also similar which is in respect of another land. On conclusion of the enquiry and after giving fullest opportunity, the Enquiry Officer held all the charges proved against the delinquent, and held that the orders passed by the delinquent were without authority, passed in haste without jurisdiction and without holding proper enquiry, and that there was lack of integrity on the part of the delinquent. The disciplinary authority concurred with the said findings in the report, who, after giving an opportunity, imposed the punishment of compulsory retirement. The appeal preferred by the delinquent against the order passed by the disciplinary authority came to be dismissed, against which the delinquent preferred appeal before the Gujarat Civil Services Tribunal. Though the Tribunal held that the enquiry was

proper, it interfered with the order of penalty by showing undue sympathy considering the fact that he had a long service career of 33 years, that he was to retire after one year and 3 months, that the charges proved against the respondent delinquent were in respect of passing irregular orders, and that if the order of compulsory retirement is passed he will lose all his pensionary benefits. As stated above, the charges proved against the delinquent were not only with regard to irregular orders passed without jurisdiction and authority, but the same reflected lack of integrity in the delinquent. As stated above, one of the charges proved against the delinquent was that though he was not holding the charge, he had granted Non-Agricultural use permission and that too without any authority and jurisdiction, and such a charge, which is proved, cannot be termed to be technical one nor can it be said that the charges proved against the delinquent were only with

regard to passing of irregular orders. The Tribunal has not properly appreciated the findings of the Enquiry Officer and the charges proved against the delinquent. The Tribunal has not held that the enquiry proceedings were defective and/or no proper opportunity was given to the delinquent. Thus, the enquiry proceedings were found to be in order, legal and valid, still the Tribunal interfered with the order of punishment only. The jurisdiction of the Tribunal in a disciplinary proceeding and interference with an order of penalty has been considered by the Hon'ble Supreme Court in the case of ***Union of India v. Parma Nanda***, reported in ***(1989) 2 S.C.C. Page 177*** where the Hon'ble Supreme Court has observed in paragraph 27 as under;

> *“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an*

appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty

if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

5. Under the circumstances, the Tribunal has materially erred in interfering with the order of penalty, more particularly considering the seriousness of the charges proved against the delinquent. There was no illegality committed by the disciplinary authority in passing the order of compulsory retirement of the delinquent while holding all the charges proved against the delinquent. On the contrary, the Tribunal has exceeded in its jurisdiction in interfering with the order of penalty which cannot be allowed to stand and the same requires to be quashed and set aside.

6. It is also required to be noted that the delinquent was to retire after one year and 3 months. The Tribunal modified the order of

punishment from compulsory retirement to withholding of 2 increments with future effect. When the delinquent was to retire after a period of one year and 3 months, there was no question of the delinquent suffering the penalty of withholding of 2 increments with future effect, as he will not be there in service to undergo the punishment and/or suffer the penalty. Thus, as such by and large no punishment was imposed by the Tribunal. Under the circumstances also, the impugned order of the Tribunal requires to be quashed and set aside.

7. Another thing which has weighed with the Tribunal is that in fact the petitioner had applied for voluntary retirement with effect from 31.12.1995 and therefore it seems that the Tribunal had interfered with the order of penalty. Merely because an employee after initiation of departmental enquiry having realised and/or anticipating that he is likely to

be held guilty and an order imposing penalty is likely to be passed tenders voluntary resignation, it is no ground to take a lenient view. It is required to be noted that the charges proved against the delinquent are very serious inclusive of lack of integrity. While interfering with the order of penalty, the Tribunal has shown undue sympathy. The Hon'ble Supreme Court in case of ***T.N.C.S. Corpn. Ltd. v. K. Meerabai,*** reported in ***(2006) 2 SCC Page 255*** has observed in paragraph 29 as under;

> *“29. Mr. Francis also submitted that a sum of Rs. 34,436.85 being 5% of the total loss of Rs. 6,88,737.12 is sought to be recovered from the respondent and that the present departmental proceedings is the only known allegation against the respondent and there was no such allegation earlier and, therefore, a lenient view should be taken by*

this Court and relied prayed for by both the parties can be suitably moulded by the Court. We are unable to agree with the above submission which, in our opinion, has no force. The scope of judicial review is very limited. Sympathy or generosity as a factor is impermissible. In our view, loss of confidence is the primary factor and not the amount of money misappropriated. In the instant case, the respondent employee is found guilty of misappropriating the corporation funds. There is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefor with the quantum of punishment awarded by

the disciplinary and Appellate Authority."

7.1. Considering the facts of the case on hand and the charges proved against the delinquent which are as stated above very serious in nature showing lack of integrity, in passing the orders without jurisdiction and authority under the law the Tribunal has materially erred in interfering with the order of penalty and reducing it to withholding of two increments with future effect, which, in the facts and circumstances of the case, was not warranted.

8. For the reasons stated above, the impugned order dated 11th April 1997, passed by the Gujarat Civil Services Tribunal in Appeal No. 467 of 1995, is hereby quashed and set aside, and the order passed by the disciplinary authority, compulsorily retiring the delinquent, is hereby restored. At the time of admission of the Special Civil Application on 28.9.1997, learned Single Judge of this Court has passed the order

that “interim relief is refused on condition that the respondent No.1 furnishes solvent surety to the satisfaction of the petitioner and on furnishing such security, respondent No.1 shall be entitled to receive monthly pension, however, he shall not claim commuted value of pension and that respondent No.1 shall give further undertaking to this Court that in the event the succeeds in the petition, he shall refund the amount of pension paid to him along with interest that may be stipulated by this Court.” It appears that such an undertaking is filed by the respondent No.1. Under the circumstances, while allowing the Special Civil Application and restoring the order of compulsory retirement, the respondent No.1 is to be directed to refund the amount of pension paid to him as ordered by this Court earlier along with interest at the rate of 7.5%, and the same may be refunded to the petitioner within the period of 3 months from today. If the security is already furnished, it

will be open for the petitioner to realise the amount from such security. Rule is made absolute with costs which is quantified at Rs. 2,500 to be paid by the respondent No.1 to the petitioner within the period of one month from today.

[M.R. Shah, J.]

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